

§ 308.534

Federal Rules of Evidence where appropriate, e.g., to exclude unreliable evidence.

(c) The ALJ will exclude irrelevant and immaterial evidence.

(d) Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay or needless presentation of cumulative evidence.

(e) Although relevant, evidence may be excluded if it is privileged under federal law.

(f) Evidence concerning offers of compromise or settlement will be inadmissible to the extent provided in rule 408 of the Federal Rules of Evidence.

(g) The ALJ will permit the parties to introduce rebuttal witnesses and evidence.

(h) All documents and other evidence offered or taken for the record must be open to examination by all parties, unless otherwise ordered by the ALJ pursuant to § 308.523 of this subpart.

§ 308.534 The record.

(a) The hearing will be recorded by audio or videotape and transcribed. Transcripts may be obtained following the hearing from the ALJ at a cost not to exceed the actual cost of duplication.

(b) The transcript of testimony, exhibits, and other evidence admitted at the hearing, and all papers and requests filed in the proceeding constitute the record for the decision by the ALJ and the Board.

(c) The record may be inspected and copied (upon payment of a reasonable fee) by anyone, unless otherwise ordered by the ALJ pursuant to § 308.523 of this subpart.

§ 308.535 Post-hearing briefs.

The ALJ may require the parties to file post-hearing briefs. In any event, any party may file a post-hearing brief. The ALJ will fix the time for filing such briefs, not to exceed 60 days from the date the parties receive the transcript of the hearing or, if applicable, the stipulated record. Such briefs may be accompanied by proposed findings of fact and conclusions of law. The ALJ

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may permit the parties to file reply briefs.

§ 308.536 Initial decision.

(a) The ALJ will issue an initial decision based only on the record, which will contain findings of fact, conclusions of law, and the amount of any penalties and assessments imposed.

(b) The findings of fact will include a finding on each of the following issues:

(1) Whether the claims or statements identified in the complaint, or any portions of such claims or statements, violate § 308.502 of this subpart; and

(2) If the person is liable for penalties or assessments, the appropriate amount of any such penalties or assessments considering any mitigating or aggravating factors that he or she finds in the case, such as those described in § 308.530 of this subpart.

(c) The ALJ will promptly serve the initial decision on all parties within 90 days after the time for submission of post-hearing briefs and reply briefs (if permitted) has expired. The ALJ will at the same time serve all parties with a statement describing the right of any defendant determined to be liable for a civil penalty or assessment to file a motion for reconsideration with the ALJ or a notice of appeal with the Board. If the ALJ fails to meet the deadline contained in this paragraph, he or she will notify the parties of the reason for the delay and will set a new deadline.

(d) Unless the initial decision of the ALJ is timely appealed to the Board, or a motion for reconsideration of the initial decision is timely filed, the initial decision will constitute the final decision of the Board and will be final and binding on the parties 30 days after it is issued by the ALJ.

§ 308.537 Reconsideration of initial decision.

(a) Except as provided in paragraph (d) of this section, any party may file a motion for reconsideration of the initial decision within 20 days of receipt of the initial decision. If service is made by mail, receipt will be presumed to be 5 days from the date of mailing in the absence of proof to the contrary.

(b) Every motion for reconsideration must set forth the matters claimed to

have been erroneously decided and the nature of the alleged errors. The motion must be accompanied by a supporting brief.

(c) Responses to the motions will be allowed only upon order of the ALJ.

(d) No party may file a motion for reconsideration of an initial decision that has been revised in response to a previous motion for reconsideration.

(e) The ALJ may dispose of a motion for reconsideration by denying it or by issuing a revised initial decision.

(f) If the ALJ denies a motion for reconsideration, the initial decision will constitute the final decision of the FDIC and will be final and binding on all parties 30 days after the ALJ denies the motion, unless the final decision is timely appealed to the Board in accordance with § 308.538 of this subpart.

(g) If the ALJ issues a revised initial decision, that decision will constitute the final decision of the FDIC and will be final and binding on the parties 30 days after it is issued, unless it is timely appealed to the Board in accordance with § 308.538 of this subpart.

§ 308.538 Appeal to the Board of Directors.

(a) Any defendant who has filed a timely answer and who is determined in an initial decision to be liable for a civil penalty or assessment may appeal such decision to the Board by filing a notice of appeal with the Board in accordance with this section.

(b)(1) No notice of appeal may be filed until the time period for filing a motion for reconsideration under § 308.537 of this subpart has expired.

(2) If a motion for reconsideration is timely filed, a notice of appeal must be filed within 30 days after the ALJ denies the motion or issues a revised initial decision, whichever applies.

(3) If no motion for reconsideration is timely filed, a notice of appeal must be filed within 30 days after the ALJ issues the initial decision.

(4) The Board may extend the initial 30-day period for an additional 30 days if the defendant files with the Board a request for an extension within the initial 30-day period and shows good cause.

(c) If the defendant files a timely notice of appeal with the Board, the ALJ

will forward the record of the proceeding to the Board.

(d) A notice of appeal will be accompanied by a written brief specifying exceptions to the initial decision and reasons supporting the exceptions.

(e) The representative for the Corporation may file a brief in opposition to exceptions within 30 days of receiving the notice of appeal and accompanying brief.

(f) There is no right to appear personally before the Board.

(g) There is no right to appeal any interlocutory ruling by the ALJ.

(h) In reviewing the initial decision, the Board will not consider any objection that was not raised before the ALJ unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection.

(i) If any party demonstrates to the satisfaction of the Board that additional evidence not presented at such hearing is material and that there were reasonable grounds for the failure to present such evidence at such hearing, the Board will remand the matter to the ALJ for consideration of such additional evidence.

(j) The Board may affirm, reduce, reverse, compromise, remand, or settle any penalty or assessment determined by the ALJ in any initial decision.

(k) The Board will promptly serve each party to the appeal with a copy of the decision of the Board and a statement describing the right of any person determined to be liable for a penalty or an assessment to seek judicial review.

(l) Unless a petition for review is filed as provided in 31 U.S.C. 3805 after a defendant has exhausted all administrative remedies under this subpart and within 60 days after the date on which the Board serves the defendant with a copy of the Board's decision, a determination that a defendant is liable under § 308.502 of this subpart is final and is not subject to judicial review.

§ 308.539 Stays ordered by the Department of Justice.

If at any time the Attorney General or an Assistant Attorney General designated by the Attorney General transmits to the Board a written finding